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SUBJECT: ZHEJIANG RESUMES COOPERATION WITH U.S. ON IPR

REF: ZHEJIANG RESUMES COOPERATION WITH U.S. ON IPR

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¶1. (SBU) Summary: After nearly two years of Consulate efforts to revive relations on intellectual property rights (IPR), Zhejiang IP officials held a roundtable on January 12 on efforts to protect IPR in the province. The meeting is a breakthrough in IPR relations, representing the first engagement on IPR issues with the province since the United States filed two IP-related cases against China in April 2007. The roundtable included representatives from the Zhejiang IP Administration, Copyright Bureau, Administration of Industry and Commerce (AIC), Public Security Bureau and provincial courts, who outlined their respective efforts to strengthen IPR protection. IP Administration officials noted the reluctance of U.S. companies to use the province's administrative protection system and said Zhejiang is trying to boost innovation through several new policies and by encouraging more patent filings. AIC officials said the province continues to lead the nation on the number of trademark cases. The Copyright Bureau emphasized its interagency and regional cooperation and also noted an increase in the number of copyright cases referred for criminal enforcement. Besides outlining its caseload, PSB noted a number of unique initiatives it is pursuing on criminal enforcement. Criminal and civil court judges noted criminal cases were down from 2007, but civil cases have increased. The judges also said the courts are continuing to move forward on damage awards and transparency. Separately, Zhejiang China Council for the Promotion of International Trade (CCPIT) representatives said the organization is taking a hard line on Zhejiang member companies that infringe IP. Zhejiang IP officials said they would welcome cooperation on more IP-related programs and exchanges with the United States, and the Consulate intends to take them up on the opportunity. End Summary.

Further Cooperation with the United States Welcome

12. (SBU) Zhejiang IP Administration Deputy General Wu, the organizer of the roundtable, welcomed the opportunity to once again engage on IP issues and expressed his desire for further cooperation with the United States on IPR training, seminars and exchanges. He said that Zhejiang attaches great importance to international cooperation on IP protection, noting several international roundtables the province recently held. One 2008 seminar was held in coordination with a number of foreign invested companies and was attended by 17 U.S. companies. Zhejiang also held an IPR forum in conjunction with the State of California and roundtables with delegations from Germany and the E.U. In addition, Zhejiang has a joint research project on IPR protection with the British Embassy.

13. (SBU) Congenoffs raised the possibility of working with Zhejiang on two U.S. Patent and Trademark Office (USPTO) office programs aimed at boosting the understanding of local rights holders on how to file patents and trademarks both in China and in the United States. (Note: The program on patent filing has already received strong support from China's State IP Office (SIPO) and would also be co-organized with SIPO in several locations.) Zhejiang IP Administration Director General Chen Zhijun expressed strong interest in these programs. When asked, Chen also said he would consider cooperating on another IP enforcement program, similar as the program jointly sponsored with USPTO in October 2006. He spoke favorably of cooperation on other exchanges, such as organizing roundtables and meetings with visiting Washington officials or U.S. IPR experts.

U.S. Companies Not Using Administrative Protection

14. (SBU) Wu pointed out that the Zhejiang IP Administration had not received any complaints from U.S. companies over the past several years, suggesting that many U.S. firms are hesitant to take advantage of Zhejiang's administrative IP protection system. He urged the Consulate to encourage U.S. companies to

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fully use Zhejiang's IP protection system. The Zhejiang IP Administration would like to establish regularly contact with U.S. companies and industry associations.

Boosting Innovation by Encouraging Patent Filing

15. (SBU) Wu said Zhejiang is striving to boost the innovative capabilities of its companies and is actively encouraging the registration of patents. The province has instituted and published several new policies to boost innovation, including the "Zhejiang Action Plan on Promoting the Self-innovation Capability in the Area of Social Development", and the "List of Key Technologies and Important Products Which Zhejiang Should Master", and the "2008-2012 Strategic Implementation Plan on Intellectual Property, Standardization and Branding". As a measure of the province's success in this effort, Wu enumerated patent filings through Zhejiang IP Administrative offices. In 2008, there were 89,965 patent applications filed and 52,955 patents granted to Zhejiang rights holders. This represents an increase of 30.5 percent and 25.8 percent respectively over 2007. Among the applications, 12,063 were invention patents, representing 26.5 percent of total applications. Of the invention patent applications, 3,269 were granted, representing 47.7 percent of total granted patents.

16. (SBU) On patent enforcement, patent officers in Zhejiang have conducted several special enforcement actions, several of which included trade fairs. Zhejiang IP Administrative officials have received 150 complaints and checked 40,000 types of goods in 2008 for patent violations. In total, 44 formal cases were established and 50 "non-established" cases were handled. To keep pace with the case load, provincial and city level authorities authorized 46 district and county level authorities to conduct patent enforcement actions. The goal of doing so is to help detect and solve patent infringement and dispute cases at an earlier stage.

Trademarks - Highest Number of Criminal Cases in China

17. (SBU) Zhejiang Administration of Industry and Commerce (AIC) Trademark Department Director Zhou Liguang emphasized that Zhejiang is one of the most active jurisdictions on trademark protection in the country. In 2008, Zhejiang continues to have the highest number of total trademark cases and highest number of referrals for criminal enforcement. According to Zhou, Zhejiang has been ranked first for many years in China on trademark enforcement. In total, the province had 7,341 trademark infringement cases in 2008. Among them, 3,100 cases were foreign related, and 822 cases had a connection with U.S. companies. As a result of the cases, 140 million RMB (USD 20.6 million) worth of penalties were imposed. Zhejiang AICs referred 78 cases for criminal enforcement in 2008, accounting for 50 percent of country's total referred trademark cases. According to Zhou, Zhejiang AIC has established a contact network with 30 foreign companies, among which 11 companies are from the United States, including Nike, Johnson and Johnson, Starwood and GM. Zhou said Zhejiang AIC is also actively encouraging local companies to establish and protect their own brands. The number of Zhejiang famous trademarks ranks only second to those of Guangdong.

18. (SBU) Zhou emphasized that of all of Zhejiang's cities, Yiwu has been particularly proactive on tackling counterfeits. Measures include beefing up manpower and equipment, checking licenses for market entrance, establishing a comprehensive database of trademarks, and more regular inspections. In 2008, Yiwu handled 911 trademark infringement cases worth RMB 18 million (USD 2.6 million). Zhou said that a newly detected problem has emerged in Yiwu that some "middlemen" traders including foreigners affix counterfeit trademarks on goods after they purchased them from the Yiwu Small Commodities Wholesale Market. This kind of illegal behavior damages the reputation of Yiwu's market although the market itself has nothing to do with the actual counterfeiting.

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Copyright Protection - Increasingly Hard in Bleak Economy

19. (SBU) Zhejiang Copyright Bureau Copyright Department Director Wang Shaojie outlined the province's efforts to protect copyrights, noting Zhejiang conducted four "special action" programs in 2008. These consisted of cracking down on private on-line gaming services, illegally pre-installed software, internet infringement and the illegal broadcasting of the Olympic Games. In total, Zhejiang copyright authorities handled 82 copyright cases and referred three cases for criminal investigation. Of the three referred cases, two involved U.S. rights holders. Wang noted a case between Zhejiang University and the Association of American Publishers. After the association filed a complaint against Zhejiang University for distributing counterfeit text books, the university was heavily fined. Since that time, Zhejiang University has scrupulously checked all its foreign language textbooks to prevent the infringement from occurring again.

20. (SBU) Wang also noted difficulties the Zhejiang Copyright Bureau faces when dealing with international cases. He particularly noted that Zhejiang authorities have difficulty continuing internet-related investigations when they discover internet service providers are based in foreign countries, including the United States. Wang added that some Zhejiang-based websites have requested the assistance of the Zhejiang Copyright Bureau to help locate U.S. rights holders to seek authorization to post copyrighted material. However, both the Zhejiang Copyright Bureau and the website have difficulties tracking down the rights holders. Wang also said that the financial crisis has made their work more difficult as companies were more tempted to cut corners by using pirated software. However, he vowed that the Zhejiang Copyright Bureau would

continue to urge companies that are still in operation to buy legitimate software. The Zhejiang Copyright Bureau plans to assist Zhejiang companies buy software with a total value of 100 million RMB (USD 15 million) from Microsoft.

¶11. (SBU) Zhejiang's internal cooperation and cooperation with other jurisdictions is improving, Wang said. For example, if a website needs to be closed because of infringement, the Copyright Bureau sends a request to the Zhejiang Communication Bureau, which readily enforces it. The Zhejiang Copyright Bureau is also partnering with Customs to improve enforcement. Companies that export optical disks are now required to record their contracts with and get approval from the Copyright Bureau before producing the optical disks. The disks are not cleared by Customs until the exporter shows the approval from the Zhejiang Copyright Bureau. Wang also praised the Shanghai Copyright Bureau's Yangtze River Delta Initiative, a cooperation framework on copyright enforcement, which is expected to greatly improve copyright enforcement in the region. The cooperation agreement is expected to be signed later in 2009.

PSB Finding Novel Ways to Strengthen Criminal Enforcement

¶12. (SBU) The Zhejiang Public Security Bureau Economic Crime Investigation Division (ECID) Deputy Director He Xiaogang said that in 2008, the province investigated 235 IP-related criminal cases. Thus far, 182 of the cases have been closed and 347 suspects have been detained. Among these cases, 18 involved U.S. rights holders. In a novel approach to fighting web-based piracy, the Zhejiang PSB opened a virtual complaint center on the website of Alibaba, the largest business-to-business sales network in the world. PSB also established a network with rights holders through the Quality Brands Protection Committee, a semi-governmental business organization that focuses on IP protection. According to He, Zhejiang is also increasing cooperation with administrative enforcement authorities within and outside the province. In 2008, Zhejiang administrative authorities referred 158 cases to PSB. More than 95 percent of these cases resulted in a conviction. When asked about internet-related cases, He said that ECID does not handle such

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cases, rather they are handled by the Public Order Management Department (another department inside PSB).

¶13. (SBU) Besides participating in the nationally organized "Mountain Eagle Action", the Zhejiang PSB also conducted some of its own special actions, including a crackdown on counterfeit auto spark plugs in Cixi and counterfeit trademarks printed in Wenzhou. He also mentioned a recent action entitled "Eagle Eye" in which factories inside and outside of China producing counterfeit Viagra were shut down. According to He, Zhejiang PSB has established a new criminal investigation system similar to the "Shanghai Initiative", which allows PSB to begin investigations based on credible evidence, rather than waiting for a rights holder to first prove a criminal threshold has been met. The Zhejiang PSB now launches investigations on certain "important" cases after "strict approval procedures" have been met, even though there is insufficient evidence to establish the case. He also said the Zhejiang PSB welcomes further cooperation with the United States on cross border IP case investigations, information and evidence collection, as well as more exchange on enforcement experience and personnel training.

Judicial Protection - Trademark Cases Make Up Vast Majority

¶14. (SBU) Zhejiang High Court Second Criminal Division Director Guan Youjun summarized Zhejiang's criminal court cases in 2008, saying that the province's courts adjudicated 94 IP-related criminal cases. Of the total, 90 cases were trademark-related and the remaining 4 were trade secret cases. Among criminal trademark cases, 47 cases involved U.S. trademarks, including those of Nike, Johnson and Johnson, HP, and Singer. He added that there were other IP-related cases not adjudicated under

criminal laws involving the infringement of IPR, but rather they were adjudicated under other charges. There were 138 IP-related criminal cases brought under "illegal business operations" and 67 IP-related cases brought under "producing and selling counterfeit and spurious goods". Guan said the number of criminal cases in 2008 decreased compared with the 112 cases in 2007, but he offered no explanation why. According to Guan, most cases occurred in areas where the economy is relatively developed such as Yiwu, Cixi and Cangnan. The buyers of the counterfeit goods came from abroad in many cases. Guan also mentioned that the Zhejiang High Court had sent a delegation to Europe for a 3-week study of IPR issues. He welcomed a similar opportunity to work with the United States.

Civil Cases Increase Substantially Over 2007

¶15. (SBU) Zhejiang High Court Third Civil Division Director Zhou Gencai said Zhejiang had 1,634 civil IPR cases in 2008, an increase of 25.6 percent over 2007. Among these cases, 150 cases involved foreigners, including rights holders from Hong Kong, Macao and Taiwan. From 2006 through 2008, there were 102 first instance civil IP cases involving US companies in Zhejiang - 45 of which were in Ningbo alone. According to Zhou, the Yiwu Court on July 1, 2007, established an IPR tribunal combining the adjudication of civil, criminal and administrative cases. Thus far, the special tribunal had adjudicated 118 IPR cases. Among these cases, 65 were civil case, 50 were criminal cases and 3 were administrative cases. Zhou said there are currently 140 IPR judges in Zhejiang. Half of them hold a masters degree, and some of them have backgrounds in technology.

¶16. (SBU) Zhou noted that all judgments of civil IPR cases in Zhejiang are published on the internet. The courts in Zhejiang have also used live internet broadcasting to allow public access to some IP-related cases. According to Zhou, Zhejiang courts are "creative on damage calculations." (Comment: Based on Shneider's experience, this "creativity" is not necessarily a good thing. End comment.) For example, a plaintiff was recently awarded damages against a defendant for a second infringement. The amount of the award was based on an agreement signed during the settlement of the first infringement case. According to the agreement, the defendant promised to pay a

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certain amount for second infringement if it occurred. According to Zhou, Zhejiang courts have adjudicated about 15 cases with which the damages awarded were higher than RMB 10 million (USD 1.5 million). (Note: In 2007, there was a case involving a French company, Schneider Electric, in which the Wenzhou Intermediate Court ordered Schneider Electric to pay RMB 335 million (USD 48 million) to a local Chinese company, Chint Group, for patent infringement in 2007. Many foreign rights holders viewed the excessively high amount of damages in relation to the value of the case as local protectionism.)

Zhejiang CCPIT Also Speaks Out on IPR Protection

¶17. (SBU) Separately, Tie Jianshe, Chairman of the Zhejiang Chamber of Commerce and China Council for the Promotion of International Trade (CCPIT) Zhejiang Sub-council also emphasized that Zhejiang is working hard to increase IP protection in the province and welcomed more exchange with the United States on the issue. He noted that Zhejiang CCPIT held a conference with the U.S. Chamber of Commerce on IP protection in early 2008. It was the third time Zhejiang CCPIT held a conference on IP protection in conjunction with a foreign organization. The event was attended by a large number of Zhejiang provincial officials as well as China Customs officials and provided an opportunity for them to interact with local and foreign companies. In addition, Yiwu's small commodities market has established an IP protection office to increase IP awareness and manage IP infringement cases.

¶18. (SBU) According to Tie, Zhejiang CCPIT is also taking a

hard line on IP violations. One of its major responsibilities is to coordinate and administer overseas exhibitions from the province - over the past five years, it has arranged for over 50,000 companies to attend exhibitions around the world. If a member company is found to have infringed a rights holder's IP, it affects the company's standing in the organization and participation in events.

Comment

¶19. (SBU) Since the spring of 2007, Zhejiang's Foreign Affairs Office routinely denied IP-related meeting requests from Washington, Embassy, and Consulate officials. Even when the request was part of a visit on a broad range of issues, the IPR component was singled out for denial. The ban not only included provincial level meetings, but also extended down to all municipal level meetings. Consulate officials were also no longer invited to industry IP seminars and other meetings that were held in conjunction with the Zhejiang Government or municipal governments. We believe the January 12 roundtable, initiated at the Consulate's request, represents a real breakthrough in the stalemate that existed with Zhejiang on IPR for nigh two years. Zhejiang's about-face is likely due to Consulate officials persistently raising the issue with high levels of the Provincial Government, often pointing out that Jiangsu and Shanghai have remained open to cooperation, while Zhejiang lagged behind. Given the history, we are cautiously optimistic about future cooperation with the province and intend to seize this opportunity to once again build strong relations on IP with a province that has the fourth largest provincial economy in China and is an important trading partner with the United States

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